

Exhibit 1

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Page 1

1 UNITED STATES DISTRICT COURT

2 for the

3 Southern District of New York

4 -----
5 In re Navidea Biopharmaceuticals Litigation,

6 Plaintiff

7 File No. 1:19-cv-01578-VEC

8 -----
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12 VIDEOCONFERENCE DEPOSITION OF

13 WILLIAM MOWER

14 Taken on September 4, 2020

15 Commencing at 9:30 a.m.

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21 REPORTED BY:

22 NANCY G. GISCH, RMR, CRR, CLR, CRC

23 (Via videoconference)
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MR. BAUDRY: I'm not going to turn
this deposition into a -- I'm not going to turn
this deposition into a Ping-Pong match,
Mr. Zimmer. So what you --

11

COURT REPORTER: I'm sorry. I'm
sorry. I couldn't hear what you are saying.
"I'm not turning this deposition into a"...?

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MR. BAUDRY: Ping-Pong match.

15

So, Mr. Zimmer, you're asking the
questions. Ask the questions that you want and
let's move forward.

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MR. ZIMMER: That's completely
nonresponsive to my point, but there's no
restriction on Mr. Weisbrot -- Weisbrot asking
questions as long as, you know, they are not
duplicative or -- or -- or in any way improper.

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If you have an --

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MR. WEISBROT: Wait -- hold --
hold -- hold -- hold -- hold on, hold on.

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1 I'm not asking any questions.

2 Mr. Zimmer, I'm asking you to ask
3 Mr. Mower the identity of his malpractice
4 insurance. That's all I'm asking for.

5 You did -- I'm not asking a question. I'm
6 asking you to ask him.

7 MR. ZIMMER: Alain, is there --

8 MR. BAUDRY: Let's move on. You
9 asked --

10 MR. ZIMMER: -- receiving input from
11 my co-counsel in asking questions?

12 MR. BAUDRY: He can -- he can text
13 you, but these interruptions of the live video
14 are not appropriate.

15 And you've asked the question. I've
16 instructed him not to answer.

17 Let's move on.

18 MR. WEISBROT: Hold -- hold --
19 hold -- hold on, on hold, hold on. I'm not
20 asking questions --

21 (Multiple voices.)

22 COURT REPORTER: Just a thought,
23 guys. Excuse me. Excuse me. Excuse me.

24 Truly, you guys are talking all over each
25 other. So if we could pause between speakers,

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1 that would be very helpful.

2 MR. WEISBROT: I'm sorry, Ms. Gisch.
3 You're 100 percent right.

4 Let's pause 45 seconds for everything that
5 I want to text you because Mr. Baudry will allow
6 me to text you my question, but won't allow me to
7 ask it. It -- it seems extraordinarily
8 reasonable.

9 So let's pause. And I will explain to you
10 by text that we want his carrier information,
11 because he has already admitted to malpractice.
12 And I want to make sure that we are able to make
13 a claim against his carrier.

14 So if Mr. Baudry wants me to wait while I
15 text it to you, as opposed to getting this done
16 100 percent faster, that's fine.

17 Please pause, Gregg.

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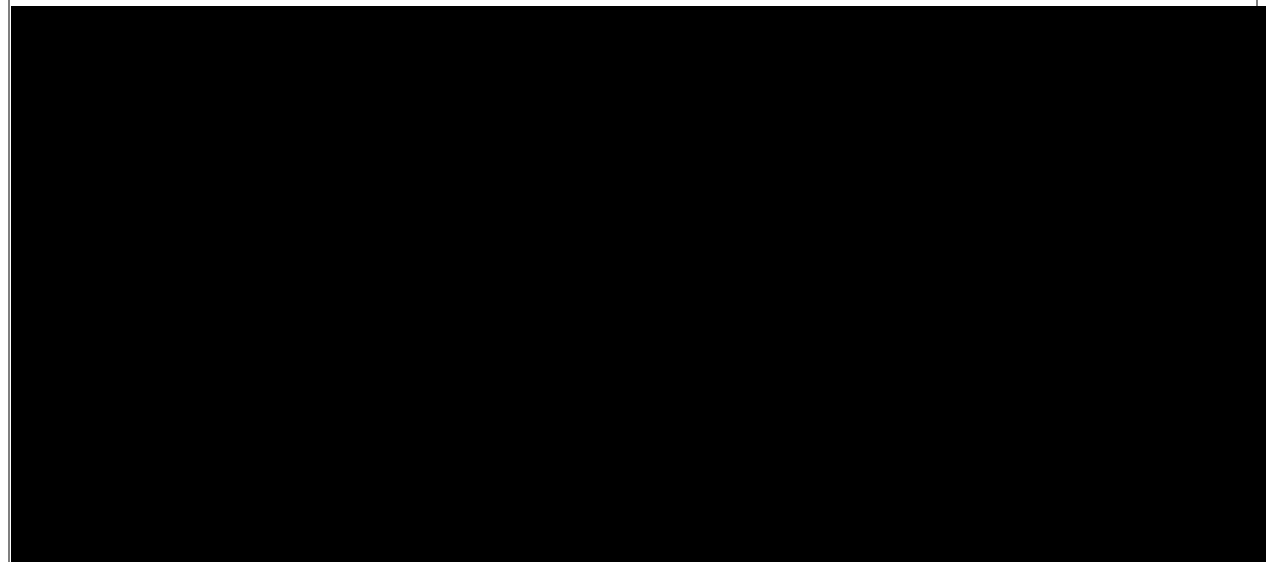
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22 Q. (By Mr. Zimmer, continuing) But in the
23 meantime, I'd just like to ask you, Mr. Mower, do
24 you know the name of your insurance --
25 malpractice insurance carrier?

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1 A. Not -- not -- not -- not -- not for sure.

2 Q. Okay.

3 A. I'd be speculating. Sorry.

4 Q. I'm going to re --

5 A. Do you want the names of my -- do you want
6 the names of my children, too, so you can go
7 after them as, as well?

8 MR. WEISBROT: No, no, no, no.
9 Doesn't your insur -- hold -- hold -- hold on.

10 MR. ZIMMER: That --

11 MR. WEISBROT: You're laughing --
12 hold on, hold on, Gregg.

13 You're laughing like an idiot.

14 You don't know the name of your insurance
15 carrier? Is that the truth?

16 You're an attorney --

17 THE WITNESS: I am --

18 MR. WEISBROT: -- testifying under
19 oath. You don't know the name --

20 THE WITNESS: No, I --

21 MR. WEISBROT: -- of your insurance
22 carrier?

23 THE WITNESS: I -- I don't.

24 MR. BAUDRY: You know what? We're
25 not responding to any questions from you,

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1 Mr. Weisbrot.

2 We're going to take a break. I suggest
3 you calm down. Take a break.

4 MR. WEISBROT: Take a break. Talk to
5 your client and find out why he doesn't know the
6 name of his insurance carrier.

7 MR. ZIMMER: Well, there --

8 MR. WEISBROT: Under oath.

9 MR. ZIMMER: -- there's still --

10 MR. WEISBROT: Thank you.

11 MR. ZIMMER: -- a deposition going on
12 here. There's a question pending.

13 Q. (By Mr. Zimmer, continuing) So the
14 question is, do you know the name of your
15 insurance carrier?

16 MR. ZIMMER: And muting the witness's
17 speaker while there's a question pending is not
18 appropriate.

19 The record --

20 MR. BAUDRY: He -- he answered the
21 question.

22 (Multiple voices.)

23 A. (Continuing) I already told you, I -- I --
24 I probably know -- I am not positive exactly what
25 their name is. Okay? And I don't want to be

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1 wrong.

2 So, you know, I -- I -- I -- I probably do
3 know, but I don't know for sure.

4 Q. Okay. So is that --

5 A. You know what I mean? You know, what's
6 the specific name? I -- I -- and, you know, I
7 could probably look -- I could get it back to
8 you.

9 You want to send me an email? We'll get
10 it to you.

11 Q. I don't --

12 MR. WEISBROT: Gregg -- Gregg --
13 Gregg -- Gregg -- Gregg, leave it at that. Leave
14 it at that. An attorney who doesn't know --

15 (Multiple voices.)

16 MR. WEISBROT: -- his insurance
17 carrier's name and number -- or name?

18 That -- that -- that's the answer of this
19 attorney who wants to continue to practice law.

20 Leave it at that. We'll move on.

21 MR. ZIMMER: However --

22 MR. BAUDRY: If we're taking a
23 break --

24 (Multiple voices.)

25 MR. ZIMMER: However, I would ask

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1 what -- what was contemplated here.

2 MR. WEISBROT: I'm sorry. Hold on,
3 Gregg.

4 Mr. Mower, I just want to ask you a very
5 quick question so I can understand your
6 testimony.

7 MR. BAUDRY: I -- I'm not going to
8 allow this --

9 MR. WEISBROT: I don't give a --

10 MR. BAUDRY: -- Mr. Weisbrot.

11 MR. WEISBROT: I don't care. That's
12 fine, that's fine. You can object.

13 Mr. Mower, do you have a stutter or is
14 your stutter an indication of dishonesty?

15 MR. BAUDRY: Hey, you know, what? At
16 this point, Mr. Zimmer, I'm going to give you a
17 very clear choice and you tell me which -- which
18 you would like.

19 Either you instruct your co-counsel to
20 stop making professionally inappropriate, snide,
21 unprofessional and disgraceful comments that have
22 no place in this legal proceeding, or I'm going
23 to terminate this deposition and we'll seek
24 appropriate relief from the magistrate judge.

25 MR. WEISBROT: Mr. Zimmer, you

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1 don't -- you don't -- Mr. Zimmer, you don't have
2 to answer that question. I'm going to withdraw
3 my question.

4 And I'm going to ask you, Mr. Zimmer, to
5 ask Mr. Mower whether or not he has some issue
6 that requires him to answer questions with
7 significant pauses, stuttering, you know, changes
8 concern -- just ask him -- here is the question
9 I'd like you to ask him.

10 Is he under the influence of any drugs
11 and -- medication or anything that would
12 influence his ability to answer questions
13 honestly. That's all you got to ask him.

14 And I understand that Mr. Baudry would
15 prefer not to answer that. So you'll -- he'll
16 ask the question.

17 Thank you.

18 MR. BAUDRY: Mr. Zimmer, if you want
19 to ask him that question, I'm going to terminate
20 the deposition under Rule 30 and seek a
21 protective order. So think carefully what you
22 want to do.

23 MR. WEISBROT: Mr. Zimmer --
24 Mr. Zimmer --

25 COURT REPORTER: If I could --

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1 MR. WEISBROT: -- Mr. Baudry --

2 (Multiple voices.)

3 COURT REPORTER: Excuse me. I think
4 that Mr. -- I think we are missing somebody here.

5 MR. WEISBROT: We're not.

6 COURT REPORTER: I do not see --

7 (Multiple voices.)

8 COURT REPORTER: I don't see Gregg
9 present with us any longer.

10 MR. WEISBROT: That's okay, that's
11 okay. He'll come back.

12 Mr. Baudry is interrupting his client --
13 not to allow a question -- not from me. I'm --
14 I'm going to put it through, you know, counsel of
15 record as to whether or not he's under the
16 influence of any medication, alcohol, or drugs
17 that might influence his ability to answer
18 questions truthfully or honestly.

19 Mr. Baudry will not allow him to answer
20 that question.

21 If it's asked by, you know, lead counsel,
22 he will terminate this deposition. I want to
23 make sure that is absolutely clear, although
24 we -- we're going to have to wait for co-counsel
25 to get back on the phone.

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1 But I want to make sure that's clear,
2 that Mr. Baudry will not allow his client to
3 answer that question.

4 Thank you.

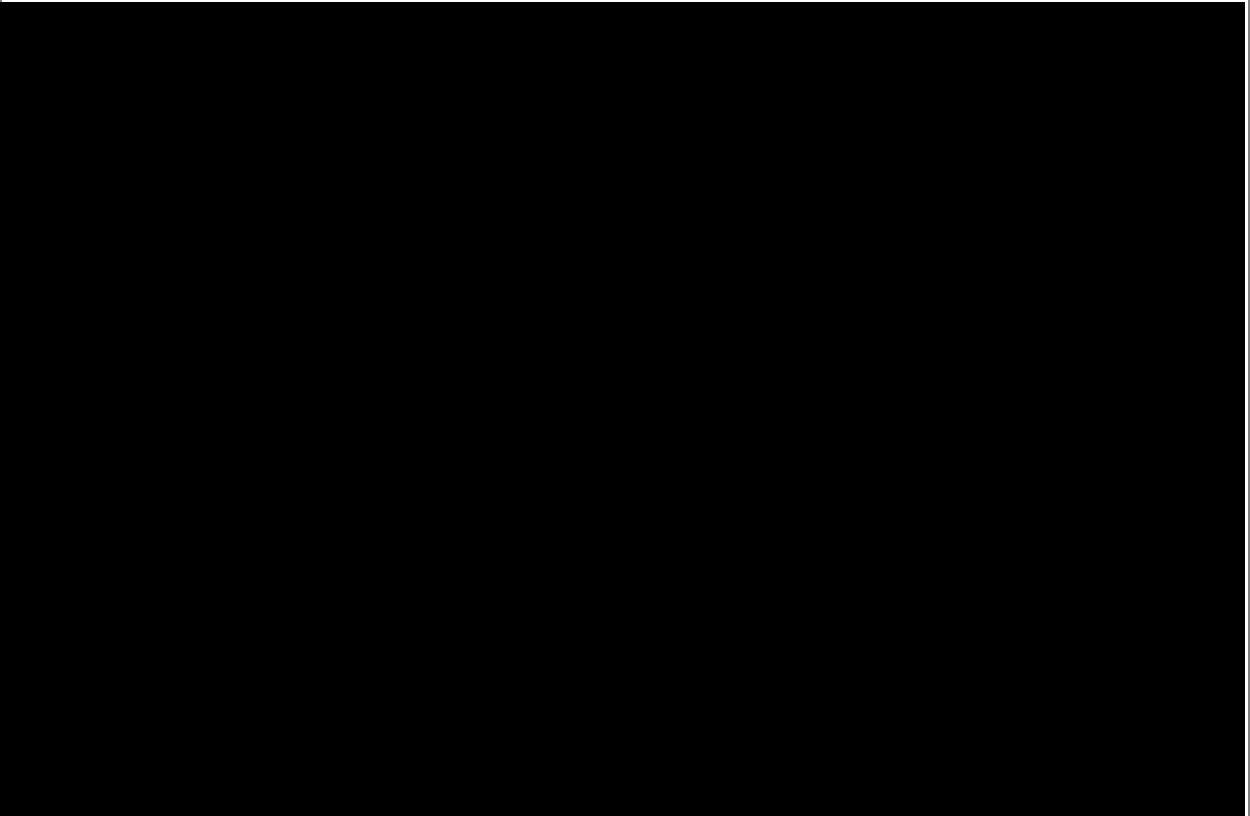
5 Let me see if I can't find out what's
6 going on. Hold on two seconds.

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MR. WEISBROT: I'm sorry, I'm sorry.
Mr. Mower, do you think this is funny?

THE WITNESS: No, I do not think it's
funny, but --

MR. WEISBROT: You -- you keep -- you
keep laughing over legal procedures, but you're a
lawyer. So I'm just wondering whether you think
it's funny that we're having a -- a deposition.

MR. BAUDRY: He's not answering your
questions, Mr. Weisbrot, so stop asking him.

MR. WEISBROT: Okay. Thank you.
I -- I will note your refusal to allow me to find
out why he thinks it's funny.

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1 THE WITNESS: I said I didn't think
2 it was funny, for the record.

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1 MR. WEISBROT: Hold on, hold on, hold
2 on. Gregg -- Gregg -- Gregg -- Gregg, hold on,
3 hold on, hold on, hold on.

4 This is the lawyer that drafted -- I'm
5 just talking to Gregg. I'm sorry.

6 Gregg, this is the lawyer who drafted the
7 opinion who is telling you, "Oh, I need a legal
8 opinion to explain what I did."

9 I want you to get his carrier's name on
10 the record. I want him to explain why he's
11 smiling, because he knows that this is
12 malpractice.

13 Like, I-- I want him to explain why it is
14 that he thinks he can't answer your question
15 by -- by asking for a legal opinion. Like, he's
16 a lawyer.

17 So please do me a favor, Gregg. Get the
18 name of his carrier. Find out -- please,
19 please -- I -- I know Alain would -- would prefer
20 for you to ask the questions, as opposed to
21 wasting 45 extra minutes -- me telling you what
22 to do.

23 I want his carrier.

24 I want him to explain why he can't give
25 you a legal opinion as a lawyer. I just -- I --

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1 I just want him to explain that.

2 And I want him to explain why it is that
3 he thinks that the ultimate issue here -- why he
4 can't answer -- why he can't answer your
5 question.

6 Thank you.

7 Go on, Alain.

8 MR. BAUDRY: All right. We will --
9 we're going to get this transcript prepared and
10 we'll seek appropriate guidance from Magistrate
11 Judge Freeman.

12 But I've been very cautious -- I've been
13 very clear about what conduct needed to stop. It
14 hasn't stopped. It's not appropriate.

15 So at this point, under Rule 30, we will
16 terminate the deposition and seek appropriate
17 guidance from the court.

18 MR. ZIMMER: Well, let's -- let's say
19 this. We have a very tight deposition schedule
20 here. Alain, you -- you're aware of that, as
21 counsel of record in the case.

22 Okay?

23 Today is the day we picked for this.
24 We've prepared for this. We've paid for this.

25 So what I would say is, if you're going to

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1 stand on that, that we get Judge -- Magistrate
2 Judge Freeman on the phone and have -- work this
3 out right now so that she can decide what --

4 MR. WEISBROT: Let's get her on the
5 phone right now. Right now. Let's pause and get
6 her on the phone and find out why Alain is
7 object -- is terminating a deposition because I
8 want to ask you questions. Go.

9 Let's get her on the phone.

10 Alain, stand by. We'll get her on phone
11 if you continue to refuse to answer questions.

12 MR. ZIMMER: We should get a dial-in
13 and we should -- and we should try to reach her
14 to resolve this, if we can, because the goal here
15 is to move this case forward on a very tight
16 deposition schedule.

17 And all the back-and-forth, rather than
18 just objecting to questions and whatever -- he
19 doesn't look -- there's no -- with all due
20 deference to Mr. Mower, he doesn't look
21 particularly upset. And he's been, you know,
22 responding to my questions.

23 I mean, we can debate later whether they
24 are --

25 MR. WEISBROT: Alain, do you have a

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1 thesis to -- to terminate the deposition? Yes or
2 no? Put it on the record.

3 I can't -- I can't hear you.

4 You -- no. You're paused. Sorry. We
5 can't hear you.

6 MR. ZIMMER: Muted.

7 MR. BAUDRY: Can you hear me?

8 MR. WEISBROT: Now we can.

9 MR. BAUDRY: I don't think we're
10 muted.

11 MR. WEISBROT: No. Now -- now we
12 can.

13 MR. ZIMMER: Yeah. Not through your
14 mic. Your mic is muted. But we can hear you
15 now.

16 MR. WEISBROT: Alain, do you have a
17 legal basis to terminate the deposition? Cite
18 it.

19 MR. BAUDRY: Rule 30. And I think we
20 should call Magistrate Judge Freeman now.

21 MR. WEISBROT: Let's do it.

22 MR. BAUDRY: That's an excellent
23 suggestion.

24 MR. ZIMMER: Okay. Does someone have
25 a conference line that we can dial into?

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1 MR. WEISBROT: You really want to
2 waste your client -- a -- a -- 45 minutes of your
3 client's time? Do you really want to do that?

4 Are you getting paid for those 45 minutes?

5 MR. BAUDRY: Counsel, I've told you
6 you've got to stop certain conduct. You haven't
7 stopped it.

8 MR. WEISBROT: Mr. Baudry --

9 MR. BAUDRY: It's outrageous. It's --

10 MR. WEISBROT: Mr. Baudry, I have
11 interrupted three times in five hours.

12 Do you really want to waste your client's
13 time and money over this issue?

14 Why can't Mr. -- excuse me -- Mr. Zimmer
15 finish his deposition?

16 MR. BAUDRY: Because you are
17 interrupting it and asking --

18 MR. WEISBROT: All right. I won't
19 interrupt --

20 MR. BAUDRY: -- and basically --

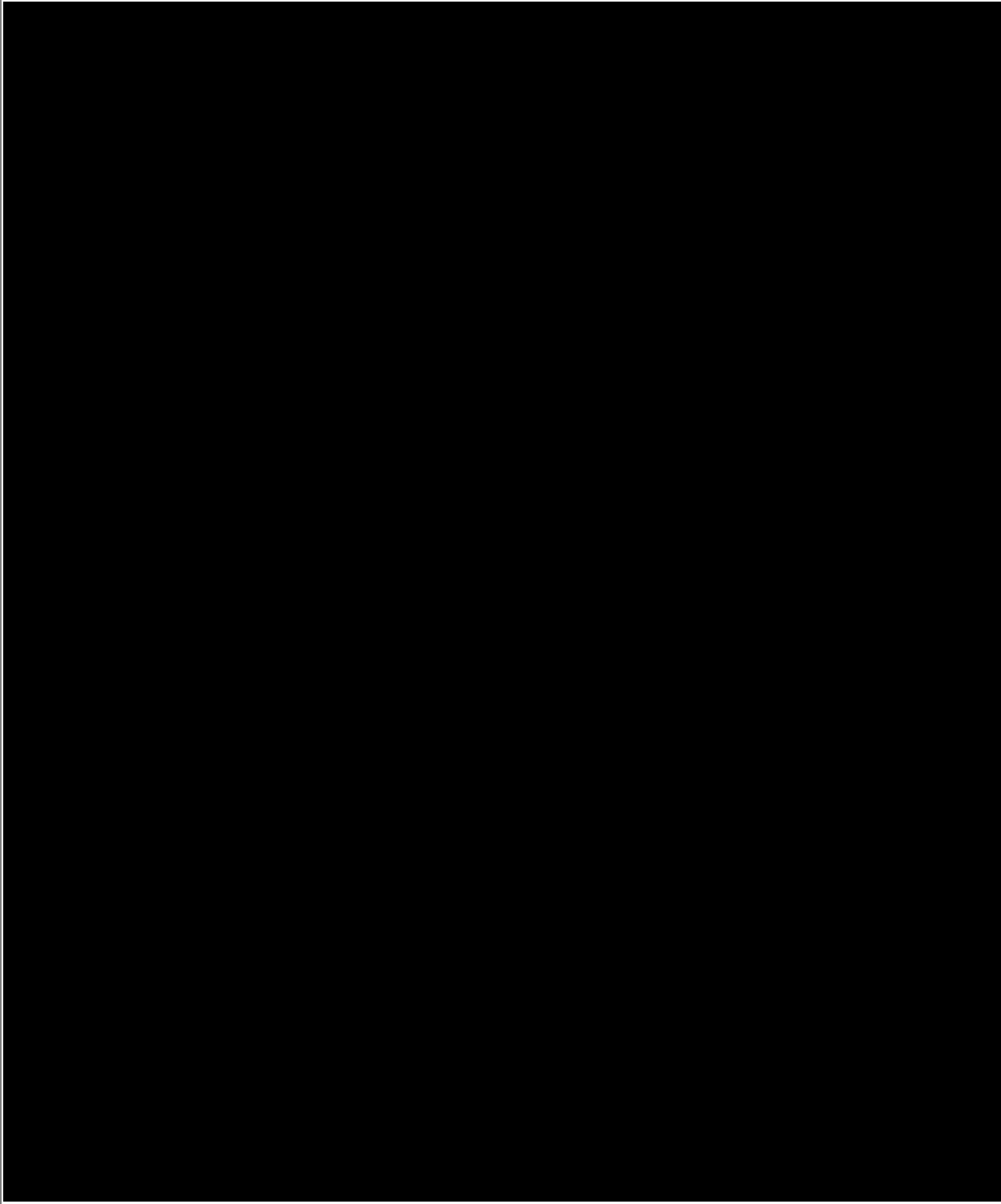
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22 MR. WEISBROT: Look. I'm muting
23 myself. Good luck.

24 MR. BAUDRY: All right. Then -- then
25 I'm going to continue. But I'm -- I'm telling

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1 you, Mr. Zimmer, we're not going to tolerate
2 this. It's not appropriate. You know it's not
3 appropriate.



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